



MICHAEL N. FEUER
City Attorney

REPORT NO. **R 20 - 0 2 5 8**
SEP 0 1 2020

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

**REQUEST FOR CLOSED SESSION PURSUANT TO
GOVERNMENT CODE SECTION 54956.9(d)(1)**

CONFIDENTIAL REPORT RE:

RECOMMENDATION FOR SETTLEMENT

**RAYMOND GARVIN v. CITY OF LOS ANGELES
LASC CASE NO. BC 694158**

The Honorable City Council
City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

(Re: Claim No. C18-00961)

Honorable Members:

It is respectfully requested that the City Attorney's Office be authorized to expend \$700,000 to settle the above-entitled matter from the Liability Claims Fund 100/59. This amount was reached after informal settlement negotiations following Plaintiff's initial demand of \$3,500,000.

It is requested that the City Council, subject to the approval of the Mayor:

- 1) Authorize the Controller's Office to transfer \$700,000 from the Liability Claims Fund 100/59, Account 009798, Miscellaneous Liability Payouts, to Fund 100/59, Account No. 009792 – Police Liability Payouts;
- 2) Authorize the City Attorney to draw a demand from Fund No. 100/59 Account No. 009792 – Police Liability Payouts, as follows:
 - a) Law offices of Gregory W. Smith in the amount of \$300,000; and
 - b) MetLife Assignment Company, Inc. in the amount of \$400,000.
- 3) Authorize the City Attorney, or designee, to make necessary technical adjustments, subject to the approval of the City Administrative Officer, and authorize the Controller to implement the instructions.

SUMMARY OF THE FACTS:

Plaintiff Raymond Garvin ("Plaintiff" or "Garvin") has been employed as an officer with the LAPD since 1988. In or about 2012, he became the Lieutenant II+II Officer in Charge ("OIC") of the Bomb Detection Canine Section ("BDCS") which is within the Emergency Services Division ("ESD"). With that position came numerous perks, including the use of a take-home vehicle and overtime pay. Plaintiff received favorable ratings as Lt. II+II at BDCS.

During his tenure at BDCS, Plaintiff heard that Captain Kathryn Meek ("Captain Meek") may become the Captain of ESD. Plaintiff believed that Captain Meek was in a romantic relationship with one of Plaintiff's subordinates, Officer DeLuccia, a K-9 handler with whom Plaintiff had had several work-related confrontations ("DeLuccia"). Plaintiff was concerned that Captain Meek would show favoritism to DeLuccia. Plaintiff relayed the rumored relationship and his concerns to his Captains at BDCS.

Captain Meek became the Captain at ESD in March 2016. One of her first actions as Captain, before she even arrived, was to remove three of the BDCS canine teams (including one headed by DeLuccia) from Plaintiff's supervision. Captain Meek will testify that before she took over, Deputy Chief Horace Frank ("Chief Frank") told Meek that Plaintiff was ill suited for the OIC position and that he wanted Plaintiff removed. Because Captain Meek and Chief Frank recognized that there was no documentation justifying Plaintiff's removal as the OIC of BDCS, Captain Meek immediately upon her arrival began creating an ad hoc "paper trail" with the goal of substantiating Plaintiff's removal. Less than two months after her arrival, in May 2016, Captain Meek "counseled" Plaintiff, and subsequently issued to Plaintiff an Employee Comment

Sheet (“ECS”). Plaintiff will testify that at this “counseling session” Captain Meek told Plaintiff, much to his shock and dismay, “everyone hates you.” Captain Meek asserted in a declaration that the reasons for the counseling session and resulting ECS were as follows:

I heard from several of Garvin’s subordinates that he often used profanity and abusive language while at work and bullied his employees. I also heard that Garvin was not a visible supervisor. He did not make himself available or accessible to his subordinates out in the field to lend his supervision, assistance, or guidance, opting instead to remain in the LAX office. As a result, I learned that BDCS suffered from low morale...

Plaintiff refused to sign the ECS claiming that it contained hearsay and appeared to take bits and pieces of facts out of context in order to “fit a pre-determined narrative that is not factual.”

While Plaintiff’s response to the ECS is self-serving, his characterization is relevant and potentially damaging. At deposition, Captain Meek could not recall the specifics of any of her contentions in the ECS – i.e. the who, how, or when of what she was told about Garvin. While Captain Meek generally identified the two BDCS sergeants, Randy Goens (“Goens”) and Deana Stark (“Stark”), as sources of the afore-mentioned complaints against Plaintiff, both Goens and Stark testified unequivocally at their respective depositions that Plaintiff did not lack communication skills, that they had not heard Plaintiff use profanity or abusive language, that they had not observed bullying behavior by Plaintiff, that Plaintiff was visible in the unit and made himself accessible at all times, that Plaintiff did not micromanage them, and that the Unit did not suffer low morale. Indeed, both Goens and Stark testified that various Bomb K-9 officers had relayed to them that upon Captain Meek’s arrival at ESD, she approached them and specifically inquired (“fished”) for negative feedback about Plaintiff. One such Bomb K-9 officer told Goens that Captain Meek specifically said to him: “Tell me something about the Lieutenant so I can get him out of here.” Plaintiff confirmed at his deposition that he had been told by several subordinates that Captain Meek had been fishing for “dirt” on him and further testified that a Lieutenant at the airport (where BDCS had an office) told Plaintiff, “I don’t know what is going on but your captain is out to get you and you better watch your back.”

Concerned about the ECS, his relationship with Captain Meek, his fear of favoritism by Captain Meek toward DeLuccia, and fear of retaliation for reporting Captain Meek’s relationship with DeLuccia to his former Captains,¹ Plaintiff met with Chief Frank in

¹ Plaintiff alleges that Captain Meek’s purported romantic relationship with DeLuccia was fairly common knowledge and that DeLuccia himself boasted of the relationship to Plaintiff. Both

July 2016 to discuss the matter. Plaintiff again reported Plaintiff's relationship with DeLuccia. Chief Frank told Plaintiff to work it out with Captain Meek and that he was doing a great job. However, behind the scenes, Chief Frank and Captain Meek were actively taking steps to remove Plaintiff as the OIC at BDCS, (by preparing the documentation necessary to administratively transfer and downgrade Plaintiff due to a purported "conflict in command." In their communications, they commiserated about how there was an insufficient factual basis to actually remove Plaintiff.

Meanwhile, in April 2016, Plaintiff was told that one of his K-9 handlers, Officer Sauvao ("Sauvao"), had tampered with another handler's certification test. Plaintiff reported this alleged misconduct to Captain Meek. A complaint was initiated against Sauvao (the "Tampering Complaint") and Sauvao was ultimately removed. Apparently, a group of Bomb K-9 officers were loyal to Sauvao and considered him their leader. So after the Tampering Complaint became known to BDCS, a flurry of personnel complaints were made by various Bomb K-9 officers against Plaintiff and his sergeants. One of the complainants, Officer Alberto Franco ("Franco"), complained to Captain Meek in February 2017 that Plaintiff had created a hostile work environment in BDCS. He alleged that Plaintiff made several inappropriate, offensive, and racially charged remarks toward and about several K-9 handlers, and that one of the handlers, Leslie Salinas ("Salinas"), was afraid to become pregnant again in fear of retaliation by Plaintiff (the "Franco/Salinas Complaint").

Due to the serious nature of the allegations contained in the Franco/Salinas Complaint, Captain Meek and Chief Frank contend they had no choice but to remove Plaintiff from the unit. Only Plaintiff was removed, even though the rash of complaints identified his sergeants as wrongdoers as well and even though no prior, similar complaints had ever been made against Plaintiff. Plaintiff was immediately reassigned to non-supervisory duties and loaned out to World Police and Fire Games while the investigation of the Franco/Salinas Complaint was pending. At World Police, Plaintiff alleges he was literally tasked with making sandwiches. In July 2017, Plaintiff was downgraded to Lt. I and administratively transferred. A month later, Plaintiff's position at BDCS was advertised and filled by a 20-year friend of Captain Meek. Captain Meek had no answer as to why Garvin's position was advertised even before she adjudicated the Franco/Salinas Complaint.

Chief Frank and Goens also testified about their knowledge of the rumored relationship and Goens went so far as to state that Captain Meek did in fact appear to favor DeLuccia. Goens testified that Plaintiff had reported Captain Meek's rumored relationship to Plaintiff's former captains and that Plaintiff was fearful he was going to be removed because 'DeLuccia had the ear of' Captain Meek.

Ultimately, the Franco/Salinas Complaint allegations were adjudicated by Captain Meek as either “Unfounded” or “Not Resolved.” In her adjudication, Captain Meek went so far as to conclude that, after an extensive investigation of the Franco/Salinas Complaint and others, the allegations against Plaintiff were completely fabricated, retaliatory in nature, coordinated, and lodged in revenge for Sauvao’s removal. Captain Meek further concluded that before the Franco/Salinas Complaint, “there was no evidence, documentation, or even a hint of racial and/or ethnic issues in the section.”

Despite Captain Meek’s clear and unequivocal determination that all of the relevant allegations against Plaintiff (for which he was removed from his coveted position at BDCS, stripped of his supervisory duties, downgraded, and administratively transferred) were fabricated and retaliatory, Plaintiff was never reinstated to Lt. II, was not reinstated as the OIC of BDCS as the position had already been filled, and was not awarded back-pay.

Plaintiff remains a Lt. I and is currently the watch commander over patrol in the Southeast Division.

LIABILITY:

Liability is likely to be adverse to the City. Plaintiff complained to his captains of favoritism of the incoming Captain Meek. It is not unreasonable to draw the inference that those complaints made it up the chain of command, to Chief Frank. If that inference is correct, then Chief Frank was directly retaliating against Plaintiff for complaining about Captain Meek. Even if that inference is incorrect, Captain Meek will testify that Chief Frank wanted Plaintiff out as the OIC of BDCS, and either implicitly or explicitly gave her the authorization to remove him when she arrived as the new commanding officer of the division. Email communications between Captain Meek and Chief Frank show that the two wanted Plaintiff out of BDCS, and they actively took steps to remove him immediately after Captain Meek’s arrival by creating an ad hoc paper trail of poor performance. Even though Captain Frank assured Plaintiff that all was well between Plaintiff and Captain Meek, behind the scenes Chief Frank was working with Captain Meek to find a reason to remove Plaintiff from his position. Since neither management-level employee can articulate a reason to remove Plaintiff that had anything to do with his ability or job performance, the City will likely be held liable for either (or both) of their wrongdoing.

Captain Meek and Chief Frank claim that the Franco/Salinas allegations were so serious they had no choice but to remove Plaintiff. However, Plaintiff’s removal at that juncture would be seen as pretextual and disingenuous given that, in her adjudication of the Franco/Salinas Complaint (signed off on by Chief Frank), Captain Meek concluded that all of the allegations were uncharacteristic, fabricated, unsubstantiated, stale and only made after Sauvao and his friends learned of the Sauvao Complaint and blamed Plaintiff for reporting it. Plaintiff was removed from his position and downgraded even though the evidence for Plaintiff’s removal

was rejected and no other alleged wrongdoer was removed. The “goal” of the Franco/Salinas event appears to have been to remove Plaintiff from leadership. (And of course, Plaintiff’s problems as leader of BDCS can be traced to his expressing concerns about favoritism by Captain Meek before she arrived.)

The Department has absolutely no compelling reason as to why it did not hold Plaintiff’s position for him, reinstate him to a Lt. II, and give him his back-pay after the favorable adjudication of the Franco/Salinas Complaint. The Department will claim that because some of the allegations were adjudicated “Not Resolved” as opposed to “Unfounded,” Plaintiff was technically not entitled to be reinstated as a Lt. II or given his back pay. According to Chief Frank, “Not Resolved” means just that – there was insufficient evidence to conclude that the allegations were “Unfounded.” However, based on these facts, this explanation would presumably enflame a jury given Captain Meek’s decisive conclusion and scathing representation that all of the allegations against Plaintiff were fabricated and lodged in a concerted effort to remove him from BDCS. While retaliation claims are factual and assessed on a case-by-case basis (i.e. there is no bright-line test for retaliation), the facts here simply do not bode well for the City.

Of further significant importance in this matter is witness credibility and optics. Plaintiff is a nice-looking, middle aged man with a calm, peaceful demeanor. He has almost a grandfatherly quality about him. He is not a fist-pounder, nor prone to fits of anger or outbursts. Not only do his sergeants, Goens and Stark, have favorable things to say about him and deny his portrayal as an angry, unfit leader, Plaintiff will make an excellent witness on his own behalf. Captain Meek, on the other hand, does not make a good witness. At her deposition, she was snippy, defensive and aloof. During difficult questioning, she became argumentative and came off as coy and non-responsive as opposed to honest and forthright. Moreover, as detailed herein, Captain Meek was unable to substantiate the very serious allegations she made about Plaintiff’s character and demeanor. The City will have a difficult task of rehabilitating her testimony at trial.

DAMAGES:

Plaintiff will portray what happened to him as a tragedy. He will claim that he was doing extremely well in his career and went from being the highest paid, highest ranked (by pay grade) lieutenant in the department to a “sandwich boy.” He had no prior complaints, followed the rules and “played it by the book” by not covering for Officer Sauvao and instead reporting the alleged tampering incident as he was required to do. Plaintiff claims that after he was removed, downgraded and administratively transferred, he was isolated and ignored and had to endure constant questioning about “what happened?” Plaintiff had been the OIC of BDCS since January 2012. Prior to Captain Meek becoming his supervisor in March 2016, Plaintiff was supervised by three other Captains and always received positive performance evaluations

whereby he met or exceeded standards. Indeed, Chief Frank admitted that Plaintiff had no performance issues before Captain Meek became his supervisor.

Plaintiff claims that the Department retaliated against him for reporting Captain Meek's alleged relationship with DeLuccia and the Sauvao Tampering Complaint, and that Plaintiff's removal as the OIC of BDCS was pretextual. As a result, Plaintiff will testify that he lost the opportunity to continue working in his coveted assignment. With this coveted assignment came mandatory cash overtime, the use of a vehicle, and an increased opportunity for promotion. According to Captain Meek, involuntary removal from a coveted position affected his future promotability. Indeed, Plaintiff alleges that he has been unable to promote since he was demoted.

Plaintiff seeks both economic and noneconomic damages. At mediation, Plaintiff presented detailed economic damage figures totaling approximately \$800,000. This sum includes salary losses/back-pay (i.e. the difference between a Lt. II and a Lt. I salary) which Plaintiff will be entitled to. At the time of mediation, this sum totaled approximately \$86,000 but will be closer to \$150,000 (or more) by the time of trial.

Other economic damages derive from Plaintiff having lost his coveted Lt. II+II position at BDCS. To the extent the jury concludes that Plaintiff should not have been removed as the OIC pending the investigation of the Franco/Salinas Complaint, and/or should have been reinstated and compensated once the Franco/Salinas Complaint was adjudicated in Plaintiff's favor, Plaintiff's economic damages will include loss of cash OT and mandatory standby overtime work. At mediation, Plaintiff claimed this sum totaled over \$60,000. Plaintiff further calculated his loss of use of his take-home vehicle over \$61,000 and other benefits (the difference between sick pay and vacation pay buyouts) totaling approximately \$20,000. While the figures are inflated, it is not unreasonable to conclude that such damages could approach \$100,000.

The largest component of Plaintiff's economic damages claim is a lost pension claim pursuant to which Plaintiff alleges he was forced into DROP. In that regard, Plaintiff will testify that when he reported his concerns about Captain Meek and DeLuccia to his former Captains, they reassured Plaintiff that she would never be made Captain at BDCS. When Captain Meek did in fact become the Captain at BDCS and began to antagonize Plaintiff as described previously, Plaintiff will testify that he felt he had no choice but to enter into DROP early "to protect himself." While the City does have a narrative to counter Plaintiff's, the jury may find this testimony credible. If it does so, the jury could very well award Plaintiff all or most of this lost pension sum. At mediation, Plaintiff asserted that his lost pension totals \$529,000 [i.e. 72% v 90% (if he had not entered DROP early) based on \$117k/year salary and a life expectancy of an additional 25 years]. He entered DROP at the earliest age possible, only

two weeks after his 50th birthday. Even if the jury believes Plaintiff could have worked an additional 15 years or until age 65, the “lost pension” sum would be \$315,000.

As for noneconomic damages, Plaintiff claims he suffered “garden variety” sleeplessness, upset stomach, embarrassment, emotional distress and loss of reputation. Plaintiff will be entitled to noneconomic damages for his pain, suffering, emotional distress, embarrassment and humiliation. Noneconomic damages are not tied to objective evidence. Instead, the amount awarded will be completely within the jury’s discretion. Based on an almost assured finding of liability against the City due in part to the fact that Plaintiff will make an incredibly sympathetic witness, Plaintiff will likely be awarded a hefty noneconomic damage sum. In Los Angeles County, awards for even garden variety noneconomic damages can total upwards of \$1,000,000 or more.

Reasonably assessed, the City’s total exposure in this case can easily range between \$1.5 - \$3 million.

PROCEDURAL HISTORY:

On February 8, 2018, Plaintiff filed his complaint for FEHA Retaliation and Labor Code Section 1102.5 Whistleblower Retaliation. In February, 2020, prior to the hearing of the City’s Motion for Summary Judgment, Plaintiff dismissed his FEHA Retaliation claim, a tactic not uncommon for this Plaintiff’s counsel. The City’s Motion for Summary Judgment and/or Summary Adjudication of Claims was heard and denied on March 3, 2020. Trial was set for April 7, 2020; however, on March 10, 2020, the Court continued the trial to allow the Parties the opportunity to participate in a mediation. The Parties mediated before the Honorable Tim McCoy (Ret.) on April 30, 2020. Plaintiff initially demanded \$3.5M. Plaintiff’s best and final demand at the mediation was \$975,000. Through informal settlement communications which continued after the mediation, the parties were able to reach a settlement for \$700,000.

Due to the Covid-19 pandemic, there currently is no trial date pending.

RECOMMENDATION:

In light of the facts of this case and the strong likelihood that the City will be found liable at trial, we believe the proposed settlement of \$700,000 is imminently reasonable and should be approved. Plaintiff is entitled to economic damages which conservatively total no less than \$500,000. Moreover, there is a high probability that Plaintiff will recover noneconomic damages at the jury's discretion. Given how favorably the jury likely will look on Plaintiff, and how unfavorably the jury likely will look on the Department's witnesses, the noneconomic damage award could reach upwards of an additional \$1 million or more.

If this Honorable Body approves the above recommendation, the demand shall be made payable as set forth in the second page of this letter. This Office will obtain the necessary release and dismissal of the above-referenced action before forwarding payment to Plaintiff.

REVIEWED
<i>[Signature]</i>
<i>[Signature]</i>
APPROVED

Very truly yours,

MICHAEL N. FEUER, City Attorney
SCOTT MARCUS, Chief, Civil Litigation Branch
ERIC BROWN, Managing Assistant City Attorney

By

[Signature: Marianne Fratianna]

MARIANNE FRATIANNE
Deputy City Attorney

MF:jam

cc: Richard Tefank, Board of Police Commissioners
Bryan Lium, Commanding Officer, Legal Affairs Division
Lt. Brian O'Connor, Legal Affairs Division
Lt. Alex Medel, Legal Affairs Division
Lt. Brian Raffish, Chief's Adjutant
Lt. Marla Ciuffetelli, Legal Affairs Division
Ilene Curry, Chief's Executive Admin. Assistant

City Council policy requires appropriate departmental personnel to attend Claims Board, Committee and City Council meetings each time a settlement or judgment on litigation is discussed to report remedial actions taken as the result of the litigation.

Department: Los Angeles Police Department
Case Name/Number: Garvin, Raymond v. City[BC 694158]
Handling Attorney: Marianne Fratianne
RMAT Category:



Corrective Action Report

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

This form has been developed by the City Attorney's Office to assist City departments in writing a Corrective Action Report ("CAR") for issues resulting in litigation. The CAR should describe the current understanding of the most likely root cause(s). This CAR will accompany documents submitted by the City Attorney's Office to the City Council and Claims Board. If there are any questions related to the confidentiality of this form, please consult the City Attorney's Office.

Date of incident/event:	05/06/2016
Briefly provide a description of the incident/event/condition:	Plaintiff alleges, via his sole 1102.5 whistleblower claim, that he was retaliated against after reporting supervisor's preferential treatment of subordinate employee and a separate act of misconduct by another subordinate. After concerted, unsubstantiated complaints were lodged against Plaintiff, Plaintiff was removed as the Lt. II+II (OIC) of the LAPD's Bomb Detection Canine Unit, stripped of his supervisory duties and subsequently downgraded to Lt. I. Plaintiff was never reinstated as a Lt. II and never awarded his back pay despite the fact that the complaints against him were deemed fabricated and not sustained

1. **Briefly describe the most likely root cause(s) leading to the of the incident or occurrence:**

Note: the root cause may be related to non-City activity or be unrelated to department operations.

Plaintiff was removed from his coveted Lt. II + II after stale, never-before-reported complaints were made against him. Despite the fact that the Captain (who is alleged to have retaliated against Plaintiff) concluded in the LOT that the personnel complaints against Plaintiff were, in essence, completely fabricated by select officers, the Captain adjudicated some of the allegations "Not Resolved" and therefore Plaintiff did not get reinstated to his Lt. II designation, did not get his coveted position back (and all of the attendant benefits) and did not receive back-pay.

Legal Advice Regarding Corrective Action (or other notes)

Risk Management Strategy
(multiple boxes may be selected)

<p>To the extent that the Chain of Command specifically and explicitly finds that allegations contained within a personnel complaint are decidedly fabricated and were lodged solely in a retaliatory attempt to remove a supervisor from command, consideration as to whether the allegations should be deemed "Unfounded" vs. "Not Resolved" should be given due consideration given the difference between the two and the ultimate effect of a "Not Resolved" finding.</p>	<p>A <input type="checkbox"/> Requires significant risk mitigation or significant infrastructure repair</p> <p>B <input type="checkbox"/> Involves reoccurring event, condition or location</p> <p>C <input checked="" type="checkbox"/> Requires change to the relevant department's policies, procedures, or practices</p> <p>D <input type="checkbox"/> Requires coordination between multiple city departments, bureaus, or offices</p> <p>E <input type="checkbox"/> Requires routine risk mitigation</p>
--	--

3. **TO BE COMPLETED BY DEPARTMENT IN CONSULTATION WITH GENERAL COUNSEL:**

Describe any corrective action(s) to be taken, scheduled date and responsible party:

Corrective Action(s) to be taken	Operational Issue	Scheduled Start Date	Scheduled Completion Date	Responsible Person(s)
	<input type="checkbox"/> Process/Procedure <input type="checkbox"/> Equipment/Infrastructure <input type="checkbox"/> Workforce/Training <input type="checkbox"/> Other			
	<input type="checkbox"/> Process/Procedure <input type="checkbox"/> Equipment/Infrastructure <input type="checkbox"/> Workforce/Training <input type="checkbox"/> Other			

4. **Review and Authorization**

The City department has reviewed the incident, event or condition, has determined that the root cause can be corrected, and will take appropriate corrective actions.

Review and authorization steps:	Signature:	Date:
Reviewed by department Risk Manager	_____	

ATTORNEY-CLIENT PRIVILEGED
 ATTORNEY WORK PRODUCT
 Do Not Duplicate / Do Not Disseminate

Reviewed by department General Counsel		
--	--	--

5. Verification of Completion

The City department has completed all corrective action(s).

Verification of Completion:	Signature:	Date:
Verification of completion by department Risk Manager, Assistant General Manager, or General Manager		